

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID IVEY,

Petitioner,

vs.

ASHLEY SACRISTE,

Respondent.

8:19CV153

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal (filing 40) and Motion for Certificate of Appealability (filing 41) filed by Petitioner David Ivey on November 18, 2020. Also before the court is a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis on appeal. (Filing 42.)

Petitioner has failed to include the \$505.00 appellate filing and docket fees. Petitioner has not previously been granted leave to proceed in forma pauperis in the district court in connection with his § 2254 petition. Thus, Fed. R. App. P. 24(a)(3), which continues in forma pauperis status on appeal without further authorization, does not apply. Within 30 days, Petitioner must either submit the \$505.00 filing and docket fees to the clerk's office or submit a request to proceed in forma pauperis. Petitioner's appeal cannot be processed until either the appellate filing fee is paid or the question of Plaintiff's authorization to proceed on appeal in forma pauperis is resolved.

With respect to Petitioner's Motion for a Certificate of Appealability (filing 41), it is apparent upon review of the motion that Petitioner's request for a certificate of appealability is directed to the Eighth Circuit Court of Appeals. *See* 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). In any case, the court in its Memorandum and Order and Judgment dated October 21, 2020, informed

Petitioner that it would not issue a certificate of appealability in this matter. (Filing 38 at CM/ECF pp. 46–47.)

IT IS THEREFORE ORDERED that:

1. Petitioner is directed to submit the \$505.00 fee to the clerk's office or submit a request to proceed in forma pauperis within 30 days.

2. The clerk of the court is directed to send to Petitioner the Form AO240 ("Application to Proceed Without Prepayment of Fees and Affidavit").

3. To the extent Petitioner seeks a certificate of appealability from this court, his request (filing 41) is denied.

4. Petitioner's Motion for a Certificate of Appealability (filing 41) is referred to the Eighth Circuit Court of Appeals.

4. The clerk of the court is directed to set a pro se case management deadline in this matter with the following text: **December 21, 2020**: Check for MIFP or payment.

Dated this 20th day of November, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge